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EXAMINER

LUBY, MATTHEW D

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 06/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,712

Applicant(s)

MAX C. PERENA

Examiner

Matt Luby

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed "closed rear end" (claim 1, line 1) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

2. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show a closed rear end of the U-shaped frame as described in the specification (page 6, paragraph 0035 - number 6). Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities: the subject heading "Brief Description of the Drawing" should be changed to "Brief Description of the Drawings" since there is more than one drawing.

Appropriate correction is required.

Claim Objections

5. Claim 2 is objected to because of the following informalities: the phrase "the electronic scale is located above the winch electronic scale is connected" is in incorrect grammatical form. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. It is unclear what Applicant intends to claim in claim 1, line 1 as a "closed rear end". This limitation is vague and indefinite because it is not clear from the language of the limitation whether a sheet of metal, for example, is what makes the rear end of the device "closed" or whether merely a bar connecting the two rear wheels makes the rear end of the device "closed. Since a clear meaning cannot be discerned from this claim limitation the limitation is vague and indefinite.

9. Claim 2 recites the limitation "the winch electronic scale" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

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10. Claim 2 recites "wherein an electronic scale is located above the winch electronic scale is connected to the winch and the support bar by control connectors." It is unclear what is meant by this limitation because the "control connectors" have already been recited in Claim 1 so it is not clear whether Applicant intends to claim that the electronic scale is connected to the winch and the support bar by different control connectors than those claimed in claim 1 or the same control connectors as those claimed in claim 1.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1 and 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Mah (5,333,333).

Mah discloses an ambulatory device comprising a U-shaped frame (base frame shown in Figure 1) having a closed rear end (the bottom part of the "U" is closed by the bars between the rear wheels), two sides (Figure 1), and an open front end (Figure 1), two small front wheels (Figure 1), two large rear wheels (Figure 1), a seat (38) attached to the rear of the U-shaped frame (through vertical supports indicated by reference numeral 32 in Figure 1), and a support system (34) attached to the rear end of the U-shaped frame (through vertical supports indicated by reference numeral 32 in Figure 1), which support system comprises a support frame having a vertical section and a

horizontal section (shown in Figure 1), a body halter having straps (Figures 19, 23 and 25-28 show various types of body halters with straps), which straps are connected by connectors to a swivel bar (44 or 216), which swivel bar is connected to a support bar (146 - Figure 7), and which support bar is connected via control connectors (120, 144) through a pulley system (138, 140, figures 17 and 18) to a winch (90) on the vertical section of the support frame (see Figure 6), wherein the two sides have hand rails (shown in Figure 1), wherein the vertical section of the support frame contains a height-adjusting mechanism (shown in Figure 12 as fastener bolts 76 and holes 78 and described in column 4, line 57 to column 5, line 2).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 2, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah in view of Jones (4,973,044).

15. Mah discloses all of Applicant's claimed invention except for an electronic scale. Jones discloses an electronic scale (column 3, line 68 to column 4, line 4) in order to indicate the amount or percentage of the patient's weight the patient is to bear during a physical therapy session (column 4, lines 8-10). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide an electronic scale on the

Mah device as taught by Jones in order to indicate the amount or percentage of the patient's weight the patient is to bear during a physical therapy session.

16. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah in view of Colpron (5,165,123).

17. Mah discloses all of Applicant's claimed invention except for hand grasps on the rear wheels. Colpron discloses an ambulatory device including large rear wheels with hand grasps (best seen in Figure 2) in order to permit the rider to self-propel the device (an inherent and well-known advantage of hand-grasps on self-propelled wheelchair devices). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide hand grasps on the rear wheels of Mah as taught by Colpron in order to permit the rider to self-propel the device.

18. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah in view of Santmann (5,224,721).

19. Mah discloses all of the claimed invention except that the seat is foldable. Santmann discloses an ambulatory device including a foldable seat (88) in order to provide a means for the user to rest that may be raised as desired (column 1, lines 12-18 and 21-27). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a foldable seat on the Mah device as taught by Santmann in order to provide a means for the user to rest that may be raised as desired.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure because it relates to ambulatory devices.
21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Luby whose telephone number is (703) 305-0441. The examiner can normally be reached on Monday-Friday, 9:30 a.m. to 6:00 p.m..
22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.
23. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Matt Luby
Examiner
Art Unit 3611



M.L.
June 13, 2003